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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

9 DELBERT M. GREENE,

10       *Petitioner,*

3:09-cv-00601-ECR-VPC

11 vs.

ORDER

13 E.K. McDANIEL,

14       *Respondent.*

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16       This represented habeas matter comes before the Court following upon a request  
17       conveyed by *pro bono* counsel to chambers that she be relieved of her representation in her  
18       pending cases.

19       Prior to counsel entering a notice of appearance as *pro bono* counsel, petitioner's  
20       motion (#7) for appointment of counsel had been pending before the Court. After the notice  
21       of appearance, the Court denied the motion as moot. Following upon current counsel being  
22       relieved of her representation in the case, the Court will reopen the prior motion. Out of an  
23       abundance of caution, and to assure that petitioner is not prejudiced by counsel being  
24       relieved at this late juncture in the case, the Court will grant the motion for appointment of  
25       counsel. The Court further takes into account the lengthy aggregate sentencing structure in  
26       relation to petitioner's current age and the Court's unpublished decision regarding access to  
27       court and legal resource issues at the Ely State Prison in *John Tole Moxley v. Neven*, No.  
28       2:07-cv-01123-RLH-GWF, #25.

1 IT THEREFORE IS ORDERED that, pursuant to counsel's request to chambers, the  
2 *pro bono* representation of Mary Beth Gardner, Esq. as petitioner's counsel is TERMINATED.

3 IT FURTHER IS ORDERED that the prior motion (#7) for appointment of counsel is  
4 reopened and that said motion is GRANTED. The counsel appointed will represent petitioner  
5 in all proceedings related to this matter, including any appeals or *certiorari* proceedings,  
6 unless allowed to withdraw.

7 IT FURTHER IS ORDERED that the Federal Public Defender shall be provisionally  
8 appointed as counsel and shall have thirty (30) days to undertake direct representation of  
9 petitioner or to indicate to the Court her office's inability to represent petitioner in these  
10 proceedings. If the Federal Public Defender is unable to represent petitioner, the Court then  
11 shall appoint alternate counsel.

12 A deadline for the filing of a new counseled amended petition will be set after counsel  
13 has entered an appearance, in the order confirming the specific appointment. The Court  
14 anticipates setting the deadline for 120 days based upon the current record. New counsel  
15 should note the prior proceedings in 2:07-cv-00092-LRH-LRL.

16 The Clerk of Court shall send an additional copy of this order to the Federal Public  
17 Defender and the CJA Coordinator for this Division. The Clerk further shall make copies of  
18 ##20-24 substantially contemporaneously available to the Federal Public Defender along with  
19 this order, either as attachments to this order, by generating new notices of electronic filing  
20 to her office, or in whatever manner is mutually administratively convenient for the Clerk and  
21 the Federal Public Defender. A copy of this order alone, without the additional record material  
22 for the Federal Public Defender, shall be sent to the petitioner himself, addressed to Delbert  
23 M. Greene, #78774, Ely State Prison, P.O.Box 1989, Ely, NV 89301.

24 DATED: January 20, 2011

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EDWARD C. REED  
United States District Judge